

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:03CR101
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
SOLOMON L. COFFEY,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's motions for new trial (Filing No. 142) and to suspend ruling on the motion for new trial (Filing No. 159). With respect to the motion for new trial, the Court has reviewed the parties' briefs (Filing Nos. 146, 153) and the affidavit filed by the Defendant (Filing No. 157).

As grounds for the motion for new trial, Coffey argues that one of the government's witnesses later recanted his testimony. (Filing No. 142.) The witness, an inmate, reportedly recanted his testimony in a conversation with a second inmate, who then reported the witness's recantation to a third inmate, who signed the submitted affidavit. (Filing No. 157.) Coffey has also requested that the Court suspend ruling on the motion for new trial until an additional affidavit can be provided from another witness "who can provide additional evidence in favor" of the motion for new trial. (Filing No. 159.)

In order to prevail on his motion for a new trial based on newly discovered evidence, Coffey would have to prove the following: "(1) the evidence was unknown or unavailable at the time of trial, (2) the defendant did not lack diligence in attempting to uncover it, (3) the newly found evidence is material, and (4) the evidence is likely to produce an acquittal if a new trial is granted." *United States v. Grover*, 511 F.3d 779, 783 (8th Cir. 2007). The newly proffered evidence fails, at a minimum, the third and fourth prongs of this test. The

information provided is triple hearsay. Even assuming that the trial witness would recant his testimony, absent his trial testimony substantial evidence existed to support the guilty verdict. Finally, the Eighth Circuit looks with “disfavor” on motions for new trial based on recanted testimony. *United States v. Baker*, 479 F.3d 574, 578 (8th Cir. 2007) (quoting *United States v. Papajohn*, 212 F.3d 1112, 1117 (8th Cir. 2000)). For these reasons, the Defendant’s motions are denied.

IT IS ORDERED:

1. The Defendant’s motion for new trial (Filing No. 142) is denied; and
2. The Defendant’s motion to suspend ruling on the motion for new trial (Filing No. 159) is denied.

DATED this 22nd day of February, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge